



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

NASHUA FIREFIGHTERS, LOCAL #789
INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS

Complainant

NASHUA FIRE DEPARTMENT AND
BOARD OF FIRE COMMISSIONERS

Respondent

CASE NO. F-0123

DECISION NO. 83-07

APPEARANCES

Representing Nashua Firefighters

Richard E. Molan, Esq.
Brian Goodman
George Dickson
Robert Duquette
Richard Raymond
James Vonhandorf

Representing Nashua Fire Department

H. Philip Howorth, Esq.
Richard Navaroli

BACKGROUND

Summary of Cases:

A. Vonhandorf:

Firefighter Vonhandorf arranged to work for ("swap") firefighter Martin. Martin was testifying at an arbitration hearing (he was not the grievant). Vonhandorf was subsequently paid but later "docked" this pay and hence his grievance was filed on the grounds that, because of the "swap" and the reason for it, he should have been paid. The Vonhandorf grievance was sent to arbitration on May 26, 1982 (the contract provides for binding arbitration as the (possible) final step in the grievance procedure).

B. Raymond:

Beginning in early February 1982, Captain Raymond requested adjustment of his "Kelly Days" time off due to a transfer within the department.

At a meeting of the Fire Commissioners on March 22, 1982 in a discussion among the Commissioners, Raymond's "Kelly Days" problem was discussed and at least one Commissioner raised the question of Raymond's conduct (in January)

of removing a tanker from a fire station and causing some damages from freezing of the tankers fittings (this had been reported to the Commissioners at their February 22nd meeting and indeed Raymond had received a verbal and written warning in connection with the tanker incident by the end of January). Some discussions among the Commissioners turned on the fact that Raymond had the "nerve" to file a grievance about "Kelly Days" when he had damaged a tanker through his own actions. Some suggestion(s) were also made that these grievances were "too picky" and were annoying. Raymond testified that had he known how things were going to turn out, he never would have filed his grievance over the "Kelly Days".

In early April, Raymond was ordered to pay for the repair of the tanker. Raymond asked for a hearing before the Fire Commissioners and one was scheduled for April 26, 1982. Raymond testified that he hoped to negotiate the cost of the repairs, that is, how much he was responsible for. Prior to the April 26, 1982 meeting of the Fire Commissioners, Local President Brian Goodman, on behalf of Captain Raymond, cancelled their participation in the meeting of the 26th and gave notice that Raymond intended to take his case to binding arbitration. Goodman reported that in a conversation with Commission Chairman Eldridge, the Chairman called them "fools" for pursuing these things to arbitration and that he (Chairman) would like to demote Raymond.

At a meeting on May 24th, a very "heated discussion" took place among the Commissioners and Raymond over the tanker incident and Raymond's failure to pay the repair bill.

On May 27, 1982, Raymond filed for arbitration on the "Kelly Days" dispute.

On June 2, 1982, Captain Raymond was ordered demoted for 90 days for failure to pay the tanker damage bill.

On June 9, 1982, Captain Raymond was further disciplined for his refusal to sign his demotion order.

On June 22, 1982, Raymond filed for arbitration on the tanker damage dispute.

C. Duquette:

On March 8, 1982, Firefighter Duquette was promoted to Lieutenant, effective July 1, 1982, for organizational reasons. (Duquette had been promoted to Acting Lieutenant in June and again in December of 1981.)

On March 17, 1982, Duquette was given a warning for alleged reckless driving. This charge apparently "triggered" an extensive review of Duquette's record.

On March 21, 1982, Duquette requested a hearing with the Commissioners. A hearing was offered for shortly thereafter but was turned down by the union president.

At the meeting on April 26, 1982, Duquette was not present, having cancelled his participation through the union president. Duquette testified he did not attend because he had neither a union representative nor a lawyer available to go with him, despite the fact that the Fire Chief had urged him to go.

At the meeting of April 26, 1982, Duquette's promotion to Lieutenant was rescinded.

Subsequently, Duquette conversed with Commissioner Dufour and this conversation led Duquette to believe he would have been promoted if he had attended the meeting

(Commissioner DuFour later corroborated the sense of this conversation - he was trying to help Duquette). Duquette asked for another hearing and also withdrew his grievance (under the contract a hearing can be held with or without a formal grievance filed).

On May 4, 1982, Duquette attended a hearing with the Commissioners and defended himself against the alleged charges of March 17, 1982. The Commissioners took no action on Duquette.

On May 24, 1982, the Commissioners again discussed the Duquette case. There were some comments favoring promotion and other comments arguing against with at least one person arguing that Duquette was a strong union man and should not be promoted and that if he were, this would aid an already too strong union (several witnesses testified to overhearing this).

Prior to the June 1, 1982 Commissioners meeting, the union informed the Board that Duquette would not be attending and that he would file his grievance for arbitration.

At the June 1, 1982 Commissioner's meeting the promotion of Duquette was (again) rescinded. (One Commissioner testified he was "fed up" with cancellations and would vote to deny the promotion; another told how he had "lost interest" in Duquette because he didn't show up and subsequently voted not to promote him.)

FINDINGS

The record does not support the contention that Vonhandorf had been intimidated or coerced in connection with his pursuing his grievance to arbitration. The Board of Fire Commissioners denied pay on the grounds of past practice and the fact that RSA 273-A calls for grievant pay only and their contract requires the parties to share the other costs of the grievance process.

The sequence of actions in the Raymond case suggest that the Board of Fire Commissioners resent grievances going to arbitration and certainly resent grievants who do not rely upon the Commissioners at all, cancel meetings when scheduled. The long delay in billing Captain Raymond coupled with the testimony concerning the Commissioners attitude toward arbitration and the quick action of the Commission following notification of pursuit of arbitration can reasonably give rise among the firefighters to the belief that an insistence to use the arbitration provided for in the contract, instead of using the Commissioners to settle the grievance will result in swift retribution by the Commissioners, unlike the usual drawn out process of hearings before the Commissioners.

The Commissioners actions in the Duquette case represent a pattern of Commission action which could reasonably suggest that if grievants did not come before the Fire Commission their cases would be acted upon negatively and even if reconsidered, pursuit of arbitration would result in swift retribution.

DECISION

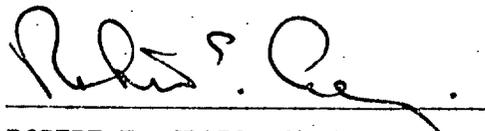
Rulings of Law:

In both the Raymond and Duquette case, actions by the Board of Fire Commissioners constitute an unfair labor practice in violation of RSA 273-A:I (a) and (b) in that the actions of the Commission seek to deter the employees use of part of

their grievance procedure, which grievance procedure is required by law (RSA 273-A:4) and also serves to intimidate the union in the administration of its employee organization in the process of seeking solutions to a grievance as provided in their contract.

ORDER

- (1) The Board of Fire Commissioners cease and desist in any action which would tend to intimidate the pursuit of grievances to arbitration;
- (2) that both parties strictly adhere to the grievance provisions of their contract and in so doing, it is our understanding therefore that requests for arbitration will follow, not precede, hearings before the Commissioners and any disposition of the grievance by the Commission;
- (3) that this ruling be posted for a reasonable time where employees can read it so that they will understand that the use of the entire grievance procedure, including arbitration, is freely open to them and will be safeguarded by this Board.



ROBERT E. CRAIG, Chairman

Signed this 24th day of March, 1983.

By unanimous vote. Chairman Craig presiding, members Seymour Osman, David Mayhew, and James Anderson present and voting. Also present, Executive Director, Evelyn C. LeBrun.